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June 9, 1981

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable George W. Kline
Arizona House of Representatives
State Capitol, House Wing
Phoenix, Arizona 85007

Re: I81-078 (R81-046)

Dear Representative Kline:

We are writing in response to your letter of March 10, 1981, in which you asked two questions relating to the county management of the "fire district fund" established by A.R.S. § 9-1005.D. A.R.S. § 9-1005.A authorizes the Board of Supervisors to pay into the fire district fund a certain amount from the county general fund. Additionally, the Board must levy a tax on all property in the district, also to be deposited in the fire district fund.

Your first question is whether interest and penalties, collected as a result of delinquent taxes, should be paid into the fire district fund or should be credited to the county general fund. The allocation of county funds is the function of the county treasurer, pursuant to A.R.S. § 11-492, which provides as follows:

All taxes collected upon real and personal property of the county, and all public monies arising from any source, or accruing under the provisions of law to a county, shall be paid into the treasury of the county, and the county treasurer shall apportion and apply the same to the several special and general funds as provided by law.
(Emphasis added.)

There are no statutory provisions implementing A.R.S. § 11-492 with respect to interest and penalties. If you want to assure that such monies will be allocated in any particular manner, we suggest you resolve that issue legislatively.

Your second question asks whether a fire district may draw a lump sum warrant for fire district purposes. We think the fire district may draw warrants for actual expenditures

The Honorable George W. Kline
June 9, 1981
Page 2

only as they occur. A.R.S. § 9-1004.A.2 requires a fire district to prepare a detailed budget. A.R.S. § 9-1005.D requires the county treasurer to maintain "a separate fund known as 'fire district fund' of the town or settlement for which collected." Any surplus remaining in the fund at the end of a fiscal year is credited to the next fiscal year. A.R.S. § 9-1004.C states:

C. The chairman and clerk of the district board of the elected chief and secretary-treasurer, as applicable, shall draw warrants on the county treasurer for money required to operate the district in accordance with the budget and, as so drawn, the warrants shall be sufficient to authorize the county treasurer to pay from the fire district fund.

The Legislature has thus provided that the county treasurer be custodian of the fire district fund, with warrants being drawn in accordance with the budget and specifically for items set forth therein. There is no legislative expression of an intention that the monies in the special fund shall be kept on deposit anywhere other than in the county treasury, nor is there any apparent intention that anyone other than the county treasurer shall serve as custodian of the fund. See Ariz. Atty. Gen. Op. I80-018. We therefore conclude that monies may not be withdrawn from the "fire district fund" in a lump sum amount.^{1/}

Sincerely,



BOB CORBIN
Attorney General

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1. In your question, you cite A.R.S. § 9-1005.E as impacting on this question. That provision limits the total amount of warrants that may be drawn in the event there are insufficient operating monies in the fire district fund; it does not authorize the drawing of lump sum warrants.